

foot trench as far as possible from the edge of the trench. After completing that work the claimant then went to another trench and as he knelt down to tie steel he experienced a stabbing pain in his right groin.

Claimant reported the injury to his supervisor. Because it was Friday evening claimant was told to report to the safety manager on Monday morning. However, claimant had the flu for a week and did not see a physician for his groin complaints until he saw Dr. Ronald Davis upon respondent's referral on October 21, 2002.

Claimant gave Dr. Davis a history of an onset of stabbing pain in the right groin area while working with steel. Claimant was concerned that he might have a hernia. Upon examination Dr. Davis did not detect a hernia and concluded claimant had suffered a right groin strain. Claimant was released with no restrictions.

Claimant returned to work the following day but was fired for allegedly failing to call in the previous week. Claimant continued to experience groin pain and returned to Dr. Davis on November 6, 2002. Dr. Davis again concluded that upon examination there was no evidence of hernia and again concluded claimant suffered from a groin strain.

Claimant then attempted to work for Jayhawk Construction but only worked one day because of the continued stabbing pain in his groin. Because the pain persisted the claimant sought a second opinion from Dr. Stephen A. Olson on January 24, 2003. Dr. Olson's examination revealed a right femoral hernia and a left inguinal hernia. The doctor later noted that it was conceivable that the pain claimant experienced was due to his right femoral hernia. Dr. Olson recommended surgical repair of the right femoral hernia because that was where claimant was symptomatic.

The claimant denies injuring his groin in either work or recreational activities after the described incident while working for respondent. Claimant did agree that he suffered work-related injuries to his left wrist and back while working for other employers after his January 24, 2003, examination by Dr. Olson.

Respondent argues that Dr. Davis conducted two examinations with negative findings for hernia. Consequently, respondent argues claimant suffered the hernias detected by Dr. Olson after his employment with respondent.

The workers compensation act places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that right depends.¹ "Burden of proof" means the burden of a party to persuade the trier of

¹ K.S.A. 44-501(a) (Furse 2000).

facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."²

The Board, as a trier of fact, must decide which testimony is more accurate and/or more credible and must adjust the medical testimony along with the testimony of the claimant and any other testimony that might be relevant to the question of disability.³

In this instance, claimant has provided a consistent history of the onset of pain while working for respondent. Claimant immediately reported his injury. Claimant further provided both doctors a consistent explanation of the type of physical activities that continued to elicit pain. Those symptoms were present before any alleged intervening work activities and remained consistent through the findings ultimately made by Dr. Olson that claimant suffered a right femoral hernia and a left inguinal hernia. The Board affirms the ALJ's finding that claimant met his burden of proof that he suffered an accidental injury arising out of and in the course of his employment with respondent.

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge John D. Clark dated October 16, 2003, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of December 2003.

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Vincent A. Burnett, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Anne Haught, Acting Workers Compensation Director

² K.S.A. 2002 Supp. 44-508(g).

³ *Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, 817 P.2d 212, rev. denied 249 Kan. 778 (1991).